



GOVERNOR'S OFFICE OF BUSINESS
AND ECONOMIC DEVELOPMENT



Edmund G. Brown, Jr
Governor

Panorea Avdis
Director

Will Koch
Chief Deputy Director

Cheryl Akin
*Deputy Director
California Competes
Tax Credit Program*

Scott Dosick
*Assistant Deputy Director
California Competes
Tax Credit Program*

Governor's Office of Business
and Economic Development
1325 J Street, 18th Floor
Sacramento, CA 95814
CCTC@gov.ca.gov
(916) 322-4051

California Competes Tax Credit Program

Committee Meeting

**Thursday, April 12, 2018
10:30 a.m.**

1325 J Street, 17th Floor
Sacramento, CA 95814

And (via teleconference)
Fontana City Hall
Executive Conference Room
8353 Sierra Avenue
Fontana, CA 92335

MINUTES

MEMBERS:

Panorea Avdis, *Chair
Director
Governor's Office of Business
and Economic Development*

John Chiang
State Treasurer

Michael Cohen, *Director
Department of Finance*

Denise Zapata, *Appointee of
the Senate Committee on Rules*

Madeline Janis, *Appointee of
the Speaker of the Assembly*

A. Call to Order and Roll Call

Chair Avdis called the meeting of the California Competes Tax Credit Committee (Committee) to order at 10:30 a.m.

Members Present: Panorea Avdis, Mark Paxson (representing the State Treasurer), Jacqueline Wong-Hernandez (representing the Director of the Department of Finance), Madeline Janis, and Denise Zapata via teleconference.

B. Approval of Minutes from November 16, 2017, Committee Meeting

Chair Avdis called for any questions or comments from the Committee or public regarding Agenda Item B. Hearing none, she requested a motion to approve Agenda Item B.

Action: Moved/Seconded: Members Wong-Hernandez/Janis

Yes: Members Avdis, Janis, Paxson, Wong-Hernandez, Zapata

No: None

C. Deputy Director's Report

- **Agenda Overview – Agreements with 63 Businesses, Total Tax Credits \$76,904,955**



GOVERNOR'S OFFICE OF BUSINESS
AND ECONOMIC DEVELOPMENT



Chair Avdis introduced the new Deputy Director of California Competes Tax Credit (CCTC) program, Cheryl Akin, who recently came to the Governor's Office of Business and Economic Development (GO-Biz) from the Franchise Tax Board (FTB).

Deputy Director Akin thanked Chair Avdis and said she is happy to be here and glad to be a part of the GO-Biz Team.

Member Janis asked Deputy Director Akin to describe her background. Ms. Akin indicated that she comes from the FTB where she worked for more than 12 years. She indicated that she began her career at the FTB as a Tax Auditor. After graduating from law school in 2012, she transitioned to a Tax Counsel position within the FTB's Legal Division. Ms. Akin stated that she is happy to be a member of the GO-Biz team.

Ms. Akin provided the Committee with the following updates:

Since the Committee last met in November 2017, Governor Brown has included in his proposed budget a 5-year extension of the CCTC program. Under the Governor's proposal, \$180 million in tax credit would be available to be allocated in each of the next five fiscal years. GO-Biz believes the extension of this program is critical to the competitive position of our state as businesses consider where to locate jobs and investments. When comparing different locations, cost versus potential credits, cost offsets, and other incentives play a major role for companies in deciding where to locate. The state budget process should be concluded by the June Committee meeting, so hopefully she will have great news to share during that meeting.

To date, GO-Biz has conducted 215 public workshops across the state and 47 webinars. Pending renewal of the program, GO-Biz will be promoting the program through a variety of outreach efforts over the summer months. As with previous outreach efforts, the current round will have a particular focus on high need areas of the state.

Today, there are 63 agreements for the Committee's consideration. The agreements represent commitments for a net increase of over 6,000 full-time jobs and \$490 million in investments in California. The total in recommended tax credits is \$76.9 million.

Chair Avdis asked if there were any questions.

Member Janis indicated that she is glad to hear the program is in the Governor's budget and hopes that it is in the Legislature's and Governor's purview to clarify that this program is meant to create good jobs. Ms. Janis also inquired whether there were any changes to the CCTC statute in the Governor's proposed budget.

Ms. Akin stated that it is a priority for the program to create good jobs in California.



GOVERNOR'S OFFICE OF BUSINESS
AND ECONOMIC DEVELOPMENT



Chief Deputy Director Will Koch added that the proposed revisions address issues identified by the Legislative Analyst Office (LAO) report. The proposed budget trailer language would reauthorize the program at \$180 million per year for the next 5 years and remove the 25% set-aside for businesses with gross receipts less than \$2 million. Separate trailer bill language would allocate \$20 million annually for direct small business technical assistance. The proposed language would allow GO-Biz to analyze whether the award of the CCTC to businesses is likely to incentivize the creation of new jobs by those businesses in California that do not otherwise have to be here.

Member Janis asked if we responded to the LAO report since she disagreed with many of the assertions in the report. Mr. Koch stated that GO-Biz did not disagree with everything stated in the report, and there have been discussions about the report with the Legislature.

Ms. Janis asked if the Committee members could get copies of the new language in the proposal. Mr. Koch said that GO-Biz would be happy to send the Committee members the publicly available language in the Governor's budget trailer bill.

Member Janis asked if there is a proposal to add language to the statute to specifically target businesses that are hiring people with barriers to employment. Ms. Akin stated that there is nothing specific to that point. Mr. Koch stated that although the proposed revisions to CCTC program do not specifically address hiring people with barriers to employment, the Governor's budget proposal does include an expansion of the New Employment Credit to further encourage businesses to hire people with barriers to employment.

Member Janis asked about the timeline for approval. Mr. Koch stated that the CCTC was included in the January budget proposal. There will be a Senate Budget Subcommittee meeting on April 26, and the program will be considered either during that hearing or at a subsequent hearing.

Ms. Janis asked what the plan was for presenting on April 26. Mr. Koch stated that he will be testifying before the Subcommittee.

Ms. Janis thanked staff for the update.

D. Discussion and Approval of California Competes Tax Credit Agreements with Businesses other than Small Businesses

Total Recommended Tax Credits:	\$62,001,838
Total Recommended Tax Credits after Adjusting for S-Corporation Law¹:	\$66,378,731

¹ One-third of the California Competes Tax Credit may be utilized by an S-Corporation to offset the tax on net income at the S-Corporation level (R&TC §23803(a)(1)). The remaining two-thirds is disregarded and may not be used as a carryover for the S-Corporation (R&TC §23803(a)(2)(A)). However, the full amount of the California Competes Tax Credit is also passed through to the S-Corporation's shareholders (R&TC §23803(a)(2)(F)).



GOVERNOR'S OFFICE OF BUSINESS
AND ECONOMIC DEVELOPMENT



Chair Avdis called for any questions from the Committee or the public regarding Agenda Item D. Deputy Director Akin stated there is a request to remove Item D-13 from consent for further discussion.

Chair Avdis asked for a motion to approve all items under Agenda Item D except for item D-13.

Action Moved/Seconded: Members Wong-Hernandez/Paxson

Yes: Members Avdis, Janis, Paxson, Wong-Hernandez, Zapata

No: None

D-13. West Coast Steel and Processing LLC

At the request of Chair Avdis, Deputy Director Akin elaborated on Agenda Item D-13. Ms. Akin described the company and the proposed agreement to the Committee. West Coast Steel & Processing LLC (West Coast) is a metal sheet and coil manufacturer. In exchange for a \$1,585,000 CCTC, West Coast has committed to a net increase of 68 full-time employees and an investment of over \$40 million. The jobs West Coast is committing to create are in classifications such as: production worker, customer service associate, and sales representative. Created in 2006, West Coast converts various types of flat-rolled carbon steel into small more usable forms for manufacturers to use in their production of finished goods. West Coast also manufactures sheet metal ducts and fittings used by HVAC contractors which it sells through wholesale distribution channels to customers throughout the southwestern United States. West Coast has outgrown its current manufacturing facilities and plans to move expand into a new 120,000 square foot facility in Rialto. West Coast also plans to add new equipment and additional full-time employees at its existing manufacturing facility in Chino.

Deputy Director Akin then indicated that Kevin Nye, West Coast's Chief Operating Officer, is available by phone to address any questions the Committee may have.

Chair Avdis asked Mr. Nye if there was anything he would like to add.

Mr. Nye stated that he had nothing to add and thanked the Committee for considering West Coast's CCTC agreement.

Member Janis expressed her appreciation to Mr. Nye for taking the time to respond to the Committee's questions. She indicated that she did not have any concerns about the company and only had questions. She asked if the company purchases steel that has already been processed and then turns it into smaller products.

Mr. Nye stated that the company takes rolled sheets of steel and other raw materials and converts them into building products and other materials that manufacturers use for their own products.



GOVERNOR'S OFFICE OF BUSINESS
AND ECONOMIC DEVELOPMENT



Ms. Janis asked where the company gets its steel. Mr. Nye replied that about 60% comes from domestic sources and 40% is obtained from overseas.

Ms. Janis asked if they get any steel from China. Mr. Nye replied that right now the company does not get any steel directly from China.

Ms. Janis asked if the tariffs would have an impact on the company's ability to grow these jobs proposed in the agreement. Mr. Nye confirmed that was a good question. He stated that there has been some price volatility in anticipation of what President Trump might do, and steel prices have gone up approximately 25%. As a result, the company also raised prices on its products, but that this has actually resulted in a short-term profit since it was still using raw materials from inventory purchased prior to the spike in prices. He said that now that the tariffs have been announced, things are starting to settle down. He is fairly certain that the company's supply chain will be minimally impacted by the tariffs.

Ms. Janis asked how the tariffs have benefitted the company. Mr. Nye responded that the company bought the older inventory when it was cheap, then after responding to the market price, it sold the processed steel at a higher price. However, the reverse happens when steel prices go down and he anticipates the situation and prices to normalize.

Ms. Janis asked if, due to the tariffs, the company might increase the percentage of steel it buys from domestic suppliers. She also asked if this might be a benefit of some kind to the business. Mr. Nye said it could potentially benefit the company, but it likely will not. The domestic mills are often producing at capacity, so it will be unlikely that they could provide more and West Coast will likely still need to purchase a significant amount of its steel from overseas sources.

Ms. Janis stated that she wondered if GO-Biz should target California steel mills to see if there is opportunity for expansion. Ms. Akin responded that GO-Biz is in the process of planning its summer outreach and will keep that in mind. Chair Avdis noted that there are other programs that target this industry, as well.

Ms. Janis stated that there are not a lot of women in steel mill processing and asked Mr. Nye about the percentage of women in its workforce. He responded that about 20% of its workforce is comprised of women and it has a significant number of women in leadership positions.

Ms. Janis asked if the company has women welders. Mr. Nye replied that the company does not do much welding, but there are women welders. He further explained that the company is in the process of growing from a small to a larger business and is in the process of developing a more comprehensive plan for recruiting a diverse workforce.

Ms. Janis asked if the diversity question on the application helped the company think about this with respect to its business when it may not have otherwise. Mr. Nye stated that he believed all of the questions in the application helped the company think about its practices.



GOVERNOR'S OFFICE OF BUSINESS
AND ECONOMIC DEVELOPMENT



Member Zapata asked Mr. Nye what share of the workers are Hispanic. She also asked what the company is doing to educate its Spanish speaking employees regarding the benefits available to them. Often times, language barriers prevent these employees from taking advantage of, for example, a 401k. Additionally, she asked if the company provides employee benefit program information in their languages to make sure they can make an educated decision.

Mr. Nye replied that about 85% of the company's employees are minorities, many of whom are Hispanic. The company prints all of its materials in English and Spanish and is in the process of implementing an initiative, which it plans to roll in about 90 days, to expand translation services to the recruiting and onboarding processes.

Ms. Zapata asked West Coast which company it uses for its 401k service and whether or not that company provides materials in the employee's language. Mr. Nye replied that they use Nationwide Financial Services. He believes they do provide multilingual materials but he is not 100% positive that it is available on the website.

Chair Avdis called for any questions or comments from the Committee or the public regarding Agenda Item D-13. Hearing none, she requested a motion to approve Agenda Item D-13.

Action Moved/Seconded: Members Wong/Paxson
Yes: Members Avdis, Janis, Paxson, Wong-Hernandez, Zapata
Nay: None

E. Discussion and Approval of California Competes Tax Credit Agreements with Small Businesses

Total Recommended Tax Credits: **\$10,526,224**
Total Recommended Tax Credits after Adjusting for S-Corporation Law²: **\$10,526,224**

Chair Avdis called for any questions or comments from the Committee or public regarding Agenda Item E. Hearing none, she requested a motion to approve Agenda Item E.

Action Moved/Seconded: Members Paxson/Wong-Hernandez
Yes: Members Avdis, Janis, Paxson, Wong-Hernandez, Zapata
No: None

F. Discussion and Approval of Recommendations for California Competes Tax Credit Agreement Termination and Credit Recapture

Total Tax Credits Recommended to be Recaptured: **\$2,205,000**
Total Tax Credits Recommended to be Recaptured after

² One-third of the CCTC may be utilized by an S-Corporation to offset the tax on net income at the S-Corporation level (R&TC §23803(a)(1)). The remaining two-thirds is disregarded and may not be used as a carryover for the S-Corporation (R&TC §23803(a)(2)(A)). However, the full amount of the CCTC is also passed through to the S-Corporation's shareholders (R&TC §23803(a)(2)(F)).



GOVERNOR'S OFFICE OF BUSINESS
AND ECONOMIC DEVELOPMENT



Adjusting for S-Corporation Law³:

\$2,403,333

Chair Avdis asked Deputy Director Akin to discuss the process for recaptured businesses.

Ms. Akin stated that there are two ways a CCTC can be recaptured. First, a company can reach out to GO-Biz and ask to be withdrawn from the program. This occurs when a company indicates to GO-Biz that it will not meet any of its milestones and voluntarily requests to cancel its agreement with GO-Biz and not claim any of the CCTC allocated to it. Second, GO-Biz can recommend the Committee recapture the CCTC if a company is in material breach of its agreement with GO-Biz. The CCTC agreements require each business to notify GO-Biz by the first day of the fourth month after the close of its tax year whether or not it has achieved the milestones for that taxable year. GO-Biz provides each CCTC awardee an annual compliance worksheet each year to help the business determine whether it met its milestones for that tax year. Ms. Akin stated that GO-Biz has several steps it follows if it does not receive the required notification. This includes phone calls, email messages, and letters sent via certified mail or FedEx reminding companies of their obligations under the CCTC agreement. The recaptures on the agenda today include four businesses that have voluntarily requested the termination of their agreements, and seven businesses that have not responded to GO-Biz's numerous attempts to gain agreement compliance. For those voluntarily requesting to exit the program, GO-Biz provides a courtesy call to make sure they understand that they have the full five years to reach any of the milestones and claim a portion of the credit. These particular businesses have indicated that they will not be reaching any of their milestones as a result of unavoidable or unforeseen circumstances, a change in business conditions, or a change in their business plans and want to make the credit available to other companies. Ms. Akin also stated that regarding the involuntary recaptures, GO-Biz has reached out to these businesses numerous times through numerous different methods, and unfortunately they have not responded. As such, they are now in material breach of their agreements with GO-Biz.

Chair Avdis asked Ms. Akin to confirm that not all of these companies are involuntary having their credits recaptured. Ms. Akin confirmed that some of these are voluntary recaptures.

Member Janis asked Ms. Akin if she could go through the process and discuss one of the businesses pending recapture. Ms. Akin asked if she wanted one that was voluntary or involuntary. Ms. Janis requested one that was involuntary.

Ms. Akin selected Agenda Item F-1, AFC Trident, Inc. (AFC), for discussion. Ms. Akin stated that AFC did not notify GO-Biz of whether it achieved its milestones for the 2016 tax year or provide the annual compliance worksheet and did not respond to any of GO-Biz's requests for this information. She noted that AFC is a calendar year taxpayer, meaning that under its agreement with GO-Biz, it was required to provide verification of whether or not it achieved its milestones for the 2016 tax year by April 1, 2017. This means that AFC is more than a year late in providing the annual notification to GO-Biz and now is

³ One-third of the CCTC may be utilized by an S-Corporation to offset the tax on net income at the S-Corporation level (R&TC §23803(a)(1)). The remaining two-thirds is disregarded and may not be used as a carryover for the S-Corporation (R&TC §23803(a)(2)(A)). However, the full amount of the CCTC is also passed through to the S-Corporation's shareholders (R&TC §23803(a)(2)(F)).



GOVERNOR'S OFFICE OF BUSINESS
AND ECONOMIC DEVELOPMENT



also late in providing the same information for its 2017 tax year which was due to GO-Biz by April 1, 2018. Ms. Akin then discussed the process GO-Biz followed with AFC in an attempt to gain AFC's compliance with its agreement. She stated that months before the annual notification was due to GO-Biz, GO-Biz sent AFC an email providing the annual compliance requirements, a compliance worksheet to assist AFC in determining whether it achieved its milestones, and detailed instructions for completing the worksheet. As the deadline approached, GO-Biz sent a follow-up email to make sure AFC was reminded of the due date. She stated that a week or two after the deadline, GO-Biz again reached out to AFC by email to notify it that GO-Biz had not received its worksheet and granted it a two week extension. Once the two week extension passed, GO-Biz reached out to AFC by email and by phone. Ms. Akin stated that GO-Biz reached out to all of the contacts provided to GO-Biz by AFC both during and subsequent to the application process. GO-Biz staff even conducted an online search in an attempt to identify and contact different representatives of the company. She stated that since these steps did not produce results, the matter was then forwarded to GO-Biz's legal counsel, Van Nguyen, to send a formal letter describing the situation. After Mr. Nguyen attempted to contact AFC by phone and email and heard nothing, he sent a formal breach letter indicating that AFC was in material breach of its agreement with GO-Biz and providing AFC 30 days to cure the breach. At the end of the 30 days, he reached out again to inform the businesses by letter that its agreement would be recommended for recapture at the next meeting unless GO-Biz received a response within an additional 30 days. Despite these efforts, AFC failed to provide the required compliance information.

Member Janis then asked what happens after a recapture is approved by this Committee. Ms. Akin replied that GO-Biz coordinates with FTB which would then go through its normal collection procedures.

Ms. Janis asked how the FTB will collect any recaptured credits. Ms. Akin stated that FTB would treat any recaptured credit as a math error on the company's tax return and follow its normal collection procedure to collect any additional tax due as a result of recaptured credits.

Ms. Janis asked if AFC provided its 2015 information. Ms. Akin said it did submit the information two months late, but GO-Biz still accepted it. It did not meet its milestones for the 2014 or 2015 tax years.

Ms. Janis said that she would like to see the annual compliance worksheet GO-Biz provides to businesses and a copy of breach letters it sends to companies. Ms. Akin said she would provide the Committee members with copies of these documents.

Mr. Koch indicated that the worksheet is a tool for the company to help it know if it hit its milestones, and the compliance process ultimately falls under the FTB's purview.

Ms. Janis stated that she agreed, and asked for confirmation that sending the worksheet was part of the contract. Mr. Koch stated that it is part of the contract.

Ms. Janis stated that it is a good thing GO-Biz provides the worksheet. She then inquired whether a claim could potentially be brought under the false claims act if a business completes the form and lies to



GOVERNOR'S OFFICE OF BUSINESS
AND ECONOMIC DEVELOPMENT



GO-Biz about achieving its milestones. Ms. Akin stated that because it is a tax credit that is ultimately claimed on an income or franchise tax return, compliance is ultimately the responsibility of the FTB rather than GO-Biz. The company would potentially be subject to any penalties and interest the FTB deemed applicable. She stated that if a company did lie, the FTB would discover the lie when it conducts its review. At that point, the taxpayer can amend its return to give back the credit, or the FTB can notify GO-Biz, which could then bring it to the Committee for recapture.

Ms. Janis said that the challenge is that the FTB process is private. She posed the question regarding a scenario whereby a company lies and someone from the public submits a claim under the false claims act to GO-Biz. Chair Avdis stated that we will have our legal team research this issue.

Ms. Janis restated her question emphasizing the possibility of a company lying on the worksheet. Chair Avdis said that an argument could be made that sometimes it could simply be an error.

Member Wong-Hernandez thanked the team for their thoroughness, communication, and the length of time provided to the awardees to meet their obligations.

Ms. Akin stated that GO-Biz wants these companies to be successful whenever possible.

Action Moved/Seconded: Members Wong-Hernandez/Janis
Yes: Members Avdis, Janis, Paxson, Wong-Hernandez, Zapata
No: None

G. Public Comment

Chair Avdis called for questions from the public. There were none.

H. Adjournment

Chair Avdis adjourned the meeting at 11:18 a.m.

Remainder of this page intentionally left blank.